No.

IN THE

Supreme Court of the United States

SHERMAN H. SKOLNICK,

Petitioner,

vs.

OTTO SPOLAR, CHARLES T. MARTIN, J. WILLIAM HAYTON, ARTHUR G. LILLY, and CHARLES R. PERRIGO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

	PAGE
Opinion Below	1
Documents and Papers Transmitted with Petition	2
Jurisdiction	2
Questions Presented	4
Constitutional and Statutory Provisions Involved	5
Statement of the Case	7
Reasons for Granting the Writ	13
Conclusion	32
Appendices:	
A. Opinion	33
B. Judgment of the Court	37
C. Order Denying Petition for Rehearing	38

CITATIONS

Cases

Bailey v. Henslee, 8 Cir., 287 F. 2d 936, 941-942 (1961)	17, 30
Baldwin v. Morgan, 5 Cir., 251 F. 2d 780, 788, 790-791 (1958)	24, 28, 31
Ballard v. United States, 329 U.S. 187, 195	17, 30
Bell v. Hood, 327 U.S. 678, 681, 682	23
Brown v. Allen, 344 U.S. 443, 470-471	19, 30
Brown v. Rutter, 139 F. Supp. 679, 682 (U. S. Dist. Ct., W.D. Kentucky, 1956)	14

PAGE

Caldwell v. United States, D. of C. Cir., 218 F. 2d 370, 371 21

Caldwell v. United States, D. of C. Cir., 218 F. 2d 370, 372 (Dissent) 21

Cassell v. State of Texas, 339 U.S. 282, 303, 304, 305 (Justice Jackson Dissenting) 13, 14, 31

Civil Rights Cases, 109 U.S. 3, 27 L.Ed. 836, 840 31

Collins v. Hardyman, 341 U.S. 651 19

Douglas v. City of Jeanette, 319 U.S. 157, 161 25

Ex parte Virginia, 100 U.S. 339, 347, 348 26

Flemming v. South Carolina Electric & Gas Co., 4 Cir., 224 F. 2d 752, 753 (1955) 25

Hague v. C. I. O., 307 U.S. 496, 507-514, 527-532 25

Harmon v. Superior Court, 9 Cir., 307 F. 2d 796, 798 (1962) 31

Hernandez v. State of Texas, 347 U.S. 475, 478-479 ..... 13, 30

Hoffman v. Halden, 9 Cir., 268 F. 2d 280, 292, 299 (1959) 29, 31

Hoyt v. State of Florida, 368 U.S. 57, 59-60 ..... 13, 30

Home Telephone & Telegraph Co. v. Los Angeles, 227 U.S. 278, 287 27

Lewis v. Brautigam, 5 Cir., 227 F. 2d 124, 127-128 (1955) 31

McNeese v. Board of Ed. for Com. U. Sch. Dist. 187, Cahokia, Ill., 83 S.Ct. 1433, 1437, 31 LW 4567, 4568-4569 25

McShane v. Moislovan, 6 Cir., 172 F. 2d 1016, 1018-1019, 1023 (1949) 28, 30

PAGE

Magnum Import Co. v. Coty, 262 U.S. 159, 163 16

Marshall v. Sawyer, 9 Cir., 301 F. 2d 639, 646 (1962) 28

Martin v. United States, 4 Cir., 166 F. 2d 76, 78 (1948) 22

Monroe v. Pape, 365 U.S. 167, 171-172, 180, 200 ..... 19, 20, 24, 27

Romero v. Weakley, 9 Cir., 226 F. 2d 399, 400, 401 (1955) 24

Screws v. United States, 325 U.S. 91, 108-113 27

Sinclair v. United States, 279 U.S. 749, 765 21

Smith v. State of Texas, 311 U.S. 128, 130 ..... 18, 29

Snowden v. Hughes, 321 U.S. 1 19

Stephenson v. Equitable Life Assur. Soc., 4 Cir, 92 F. 2d 406, 410 3

Strauder v. West Virginia (100 U.S. 303, 25 L.Ed. 664) 16

Stringer v. Dilger, 10 Cir., 313 F. 2d 536, 540 (1963) 29

Thiel v. Southern Pac. Co., 328 U.S. 217, 220 29

United States v. Classic, 313 U.S. 299, 326 27

United States ex rel. Goldsby v. Harpole, 5 Cir., 263 F. 2d 71, 80 (1959) 15, 30

United States v. Huff, 206 Fed. 706, 711 (D.C. Ga. 1913) 22

United States ex rel. Seals v. Wiman, 5 Cir., 304 F. 2d 53 (1962) 30

Valle v. Stengel, 3 Cir., 176 F. 2d 697, 702 (1949) 28

Wall v. King, 1 Cir., 206 F. 2d 878, 882 (1953) 22

Watkins v. Oak Lawn Jockey Club, 8 Cir., 183 F. 2d 440, 442 (1950) 25

Williams v. United States, 341 U.S. 97, 99 27

References

PAGE

Justice, 1961, United States Commission on Civil Rights 31

Report, page 103, Chapter 7, "Jury Exclusion"; page 250, Notes to footnote 134, 136, Chapter 7, "Jury Exclusion" 9 14

"The Bill of Rights is Not Enough", by William O. Douglas, New York Univ. Law Review, April, 1963, Vol. 38, No. 2, page 228 16

Justice Department (Bulletin), Criminal Division, Vol. 9, No. 14, pp. 1-2, July 17, 1950 18

Congressional Globe, 42d Congress, 1st Session, App. 315, statement of Representative Burchard 20

World Almanac 1962, published by New York World-Telegram and The Sun, page 258 17

Constitution

United States Constitution, Fourteenth Amendment, Section 1 3-5

Statutes

U. S. Code Annotated, Title 18, Section 241 21

U. S. Code Annotated, Title 18, Section 243 ....3, 5, 14, 17, 19

U. S. Code Annotated, Title 42, Section 1985(2) 3, 4, 6, 19, 20, 21, 22

U. S. Code Annotated, Title 42, Section 1985(3) 3, 4, 5, 6, 14, 19, 20, 21

Revised Statutes, Section 1980 20-21

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The petitioner, Sherman H. Skolnick, prays that a Writ of Certiorari be issued to review the final judgment of the United States Court of Appeal for the Seventh Circuit. Petitioner's timely Petition for Rehearing in the United States Court of Appeals for the Seventh Circuit was denied on June 6, 1963.

OPINION BELOW.

The opinion of the Court of Appeals is reported in full in 317 F.2d 857. It is printed herein as Appendix A.

DOCUMENTS AND PAPERS TRANSMITTED WITH PETITION.

Certified copies of the following filed in the United States Court of Appeals, Seventh Circuit, with nine (9) additional copies:

1. Petitioner's Brief and Appendix.
2. Respondent Spolar's Brief and Appendix.
3. Brief of respondents Martin, Hayton, Lilly, and Perrigo.
4. Petitioner's Reply Brief.
5. Petitioner's Petition for Rehearing, with attached Motion to Expunge Portions of the Court's Opinion.
6. Certified copy of the Opinion rendered by the United States Court of Appeals for the Seventh Circuit.
7. Certified copy of the judgment of the Court of Appeals, entered on May 7, 1963.
8. Certified copy of the Order entered on June 6, 1963, denying Petition for Rehearing.

JURISDICTION.

The final judgment of the United States Court of Appeals for the Seventh Circuit, affirming the dismissal by the District Court, was entered on May 7, 1963 (Appendix B, *infra*, p. 37). The petitioner filed a timely petition for rehearing, which was denied on June 6, 1963 (Appendix C, *infra*, p. 38).

The petitioner therefore invokes the jurisdiction of this Court under 28 U.S.C.A. Section 1254(1).

In addition, the petitioner invokes this Court's power of supervision over the lower courts because the Court of

Appeals for the Seventh Circuit, in petitioner's suit, has so far departed from the accepted and usual course of judicial proceedings:

1. The Court of Appeals has assumed, in petitioner's suit, the functions of a trial court, passing upon the merits of petitioner's suit at the same time affirming a dismissal for lack of jurisdiction—an act of a Court of Appeals contrary to precedent (See, *Stephenson* v. *Equitable Life Assur. Soc.*, 4 Cir., 92 F.2d 406, 410). The petitioner was not heard on the merits of his suit in the District Court (App. 72-73; Rec. 110-111).

2. The Court of Appeals has affirmed a void judgment. Although the petitioner was assailed in his rights in the District Court, he was not permitted to be heard there or to be represented there by an attorney. A hostile District Judge, in a non-judicial act, barred and excluded petitioner from the right of equal access and equal entry into the District Court to bring therein a Civil Rights Act suit. (App. 72-73; Rec. 110-111).

3. The Opinion of the Court of Appeals relies upon, and adopts and recites, unfounded and unproven allegations from outside the record, thus defaming and disparaging the petitioner and denying the petitioner due and orderly process in the Court of Appeals, a Federal right guaranteed by the Fifth Amendment to the Constitution. By adopting and reciting the unfounded and unproven allegations from outside the record, the Court of Appeals has enabled the respondents to perpetrate a fraud upon the Court of Appeals. (See, Certified copy of Petition for Rehearing, with attached Motion to Expunge Portions of the Court's Opinion, pp. 1-3, 5-9, and page 13 in particular).

4. The Court of Appeals sanctions a departure by the District Court from the accepted and usual course of judicial proceedings.

The petitioner invoked the jurisdiction of the District Court under the provisions of Title 28 U.S.C. Sections 1331 and 1343; Title 42 U.S.C. Sections 1981, 1983, 1985(2), 1985(3), 1988; Title 18 U.S.C. Sections 241, 242, 243; and under the Constitution of the United States and particularly Amendment XIV, Section 1.

QUESTIONS PRESENTED.

1. Whether the District Court has jurisdiction of a suit against a state court deputy sheriff and collaborators who destroyed trial by jury, by the intentional exclusion of Jews and Negroes from state civil jury service, and by the unlawful invasion of and interference with jurors' deliberations and by the interference with the exercise by jurors of their constitutional rights to independent judgment.

2. Whether valid jury selection of a state civil jury is a Federal constitutionally protected right.

3. Whether a citizen of the Jewish faith and race is denied the Equal Protection of the Laws by the exclusion from state civil jury service of not only Jews but also Negroes.

4. Whether the overt acts of a state court deputy sheriff and collaborators who destroy trial by jury, by the exclusion of Jews and Negroes from state civil jury service and by the unlawful invasion of and interference with jurors' deliberations, is action taken "under color of" law and within the sanctions of 42 U.S.C.A. Section 1983.

5. Whether non-officials acting together with a state court deputy sheriff to destroy trial by jury and to deny

a citizen of the Jewish faith and race the equal protection of the laws, and to impede, hinder, obstruct, and defeat the due course of justice, by the exclusion of Jews and Negroes from state civil jury service and by the unlawful invasion of and interference with jurors' deliberations and by the interference with the exercise by jurors of their constitutional rights to independent judgment, and to damage a citizen of the Jewish faith and race for enforcing, or attempting to enforce, the equal protection of the laws, are within the sanctions of 42 U.S.C.A. Sections 1985(2) and 1985(3).

6. Whether non-officials conspiring to prevent or hinder a state court deputy sheriff and others from giving or securing the equal protection of the laws to a person of the Jewish faith and race, by the exclusion of Jews and Negroes from state civil jury service and by the unlawful invasion of and interference with jurors' deliberations, are within the sanctions of 42 U.S.C.A. Section 1985(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

A. Amendment XIV to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B.) Title 18 U.S. Code Annotated, Section 243:

"No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as * * * petit juror in any court * * * of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000."

(C). Title 42 U. S. Code Annotated, Section 1985(2):

"* * * if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State * * * with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;"

(D.) Title 42 U.S. Code Annotated, Section 1985(3):

"If two or more persons in any State * * * conspire * * * for the purpose of preventing or hindering the constituted authorities of any State * * * from giving or securing to all persons within such State * * * the equal protection of the laws * * * in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."

STATEMENT OF THE CASE.

The petitioner seeks to hold a deputy sheriff and his collaborators, respondents, liable for overt acts done in furtherance of a conspiracy to destroy trial by jury: by the intentional exclusion of Jews and Negroes from state *civil* jury service; by the unlawful invasion of and interference with jurors' deliberations, and by the interference with the exercise by jurors of their constitutional rights to independent judgment. In furtherance of the objects of their conspiracy, the respondents planned and agreed with each other to impede, hinder, and obstruct the due course of justice in the State Court and to deny the petitioner the Equal Protection of the Laws; and to damage the petitioner for enforcing or attempting to enforce his rights to the Equal Protection of the Laws. The following overt acts were done in furtherance of the respondents' conspiracy:

1. On January 18, 1961, the respondents acting through and by the respondent Spolar, Deputy Sheriff, assigned to the State jury trial Court Room, directed the Jury Assembly Room Deputy Sheriff or attendant, before the panel of veniremen were brought into the Court Room, not to "bring up any blacks or sheenies", meaning and referring to Negroes and Jews (App. 5; Rec. 6), knowing that the petitioner was a native born American and a member of the Jewish faith and race. (App. 4, par. 9; Rec. 5).

2. On January 18, 1961, the respondents, acting through and by the respondent Spolar, stated to the Jury Assembly Room Deputy Sheriff or attendant:

> "We got some kid sitting in a wheelchair making out like he is a cripple and he claims this here Horn

'blower Company took away his trust fund,'' meaning and referring to the petitioner, a paraplegic cripple since the onset of polio in 1936, at the age of six. (App. 5; Rec. 6).

3. On January 18, 1961, when the second panel of veniremen was brought into the Court Room, including two Negroes, and while the Negro woman on said panel was being interrogated, the respondent Perrigo, in furtherance of the objects of respondents' conspiracy, stated to his attorney, respondent Martin:

> ''How did she get up here? Get rid of the black ones'', meaning and referring to the Negroes, who were, accordingly excluded. (App. 5; Rec. 6-7).

4. On January 26, 1961, in furtherance of the respondents' conspiracy, the following overt acts were committed or caused to be committed:

(a) During the Court's recess and while the Jury Room door was wide open with several jurors in and outside the Jury Room, respondent Spolar, Deputy Sheriff, within an easy hearing distance from the jurors stated to the petitioner's father, Max Skolnick:

> ''It's all over for you; Your kid ain't sick, like he's sitting there in the wheelchair; Everybody around here knows about your boy; You think they (pointing to the jury room) don't know about your kid?; Tell the truth, you never had a trust fund, your kid's a gambler; And your boy ain't sick, you're just making it up. It's all over anyway, you're not going to get anything. You never had a trust fund. You're making it up.'' (App. 5-6; Rec. 7).

(b) During the deliberations of the jurors, the respondents Martin and Hayton, moved or caused a table to be moved close to the Jury Room door, and while respondent Hayton and two assistants were sitting at the table,

respondent Martin was squatting close to the Jury Room door, looking through the keyhole and talking back over his shoulder to the three persons in a tone of voice within the hearing of the jurors:

> With the pile of papers the jury had they would be "eating breaktast here too"; that no jury could be expected to reach a decision under the circumstances. (App. 6; Rec. 7-8).

(c) The respondent Spolar, Deputy Sheriff, upon his return from supper together with the respondent Lilly, ignored the protestations and request of the petitioner to stop the respondent, Martin, from talking loud close to the Jury Room door, while the jurors were deliberating on their verdict, although the respondent Spolar had announced that he was in charge of the Court Room and that the Judge went home. (App. 7; Rec. 8).

(d) Thereupon, the respondent Martin continued to look through the keyhole of the Jury Room door and continued to talk to the respondents Hayton and Lilly, and to two other persons, unknown to the petitioner, and undeterred by the respondent Spolar, Deputy Sheriff. Respondent Martin stated within hearing of the jurors:

> "They have it our way, they figured out that he was gambling and we shouldn't be held liable." (App. 7; Rec. 8). Intending to be understood as meaning and referring to the petitioner.

(e) Thereupon, the respondent Hayton stated in a loud tone of voice within the hearing of the jurors, the following:

> "They understand; they're following our arguments just like we made them; they have the kid and his mother pat; he and his mother thought they're putting something over on the jury", meaning and referring to the petitioner and his mother. (App. 7; Rec. 8-9).

(f) That at about 7:00 o'clock P.M., the respondent Spolar, Deputy Sheriff, shouted across the Court Room:

> "I think it time to feed the prisoners", meaning and referring to the jurors in the small unventilated jury room. (App. 7-8; Rec. 9).

(g) Thereupon the respondent Martin in a tone of voice within the hearing of the jurors stated:

> "With that mountain of interrogatories, they'll have to be fed plenty", meaning and referring to the jurors. (App. 8; Rec. 9).

(h) During the deliberation of the jury at night, the respondent Spolar, Deputy Sheriff, and respondent Lilly, standing in an unlighted passage way close to the second door of the Jury Room, were discussing petitioner's case. (App. 8; Rec. 9).

(i) That thereupon, the respondents Spolar and Lilly, upon seeing petitioner's father, Max Skolnick, separated, whereupon the respondent Lilly re-entered the Court Room and joined the respondent, Martin, close to the Jury Room door, and within the hearing of the jurors began a discussion, to wit:

> People that try to victimize stockbrokers by annoying them with worthless law suits. (App. 8; Rec. 9-10).

(j) At about 10:15 o'clock P.M., which was about fifteen minutes before the jury was to come out, the respondent Spolar, Deputy Sheriff, ordered and forced the petitioner and his father, Max Skolnick, to leave the Court Room, stating to the petitioner:

> "You and your dad, outside." (App. 8; Rec. 10).

(k) Thereupon, the respondents Spolar, Martin, Hayton, and Lilly, and two other persons, remained in the Court Room and closed the door. (App. 9; Rec. 10).

(l) Thereupon, the respondent Spolar, Deputy Sheriff, after leading the jurors to the elevator, returned to the Court Room, locked the door and remained in the Court Room with the respondents Martin, Hayton, Lilly, and the two unidentified persons. About seven minutes afterwards the respondent Spolar returned to the night elevator, waited for the jurors to descend and then returned to the Court Room to rejoin his collaborators, above named. (App. 9; Rec. 10).

The respondents' conspiracy succeeded. No jury verdict was returned and the six-day trial was nullified, destroyed (App. 10; Rec. 11).

The petitioner brought suit against the Deputy Sheriff, and his collaborators, respondents. The Complaint was filed June 11, 1962, with Demand for Jury Trial. The allegations in petitioner's Complaint (App. 3-9; Rec. 6-11) were admitted by respondents' motions to dismiss (App. 12-13, 20-21; Rec. 27-29, 38-40). The respondent Spolar, Deputy Sheriff, pleaded that he was not "under color of law" because the quasi-judicial nature of his position exempts him from any liability. (App. 15-16; Rec. 31-33).

The petitioner's case was set for a *hearing* on all motions (App. 36; Rec. 65). At the *hearing* the petitioner's attorney was not permitted to speak on behalf of the petitioner, or to represent the petitioner. Although the petitioner was assailed in his rights in the District Court, he was not permitted to be heard there. (App. 72-73; Rec. 110-111). A hostile District Judge, in a non-judicial act, had thus barred and excluded the petitioner from the right of

equal access and equal entry into the Federal District Court to bring therein a Civil Rights Act suit.

The Court of Appeals, ignoring the foundation of the judgment of the district court, proceeded nonetheless to affirm the dismissal by the district court for lack of jurisdiction. In affirming the dismissal for lack of jurisdiction, the Court of Appeals proceeded, without lawful authority, to pass upon the merits of the petitioner's case. The written Opinion of the Court of Appeals adopts and recites unfounded and unproven allegations from outside the record; thus defaming and disparaging the petitioner, and denying the petitioner due and orderly process in the Court of Appeals. The Court of Appeals, by relying upon the unfounded and unproven allegations from outside the record, has enabled the respondents to perpetrate a fraud upon the Court of Appeals. (See Petition for Rehearing, with attached Motion to Expunge Portions of the Court's Opinion, page 2, pars. 1, 3; pp. 7-9). The timely Petition for Rehearing was denied June 6, 1963. The Court of Appeals ignored the petitioner's Motion to Expunge.

REASONS FOR GRANTING THE WRIT.

I.

The petitioner petitions this Court to dispel a serious doubt.

> "I suppose there is no doubt, *and if there is this Court can dispel it*, that a citizen or a class of citizens unlawfully excluded from jury service could maintain in a *federal court* an individual or a class action . . . against the state officers responsible." Justice Jackson Dissenting in *Cassell* v. *State of Texas*, 339 U.S. 282, 303-304, 70 S.Ct. 629, 640. (Emphasis added).

A doubt now exists as to whether the district court has jurisdiction of a suit by a person of the Jewish faith and race (petitioner) against a state court deputy sheriff and others who excluded Jews and Negroes from jury service in a state *civil* court, and did other overt acts in furtherance of a conspiracy to interfere with a jury's deliberations, and to destroy trial by jury.

As this Court has said in *Hoyt* v. *State of Florida*,

> "We of course recognize that the Fourteenth Amendment reaches not only arbitrary class exclusions from jury service based on race or color, but also all other exclusions which 'single out' any class of persons 'for different treatment not based on some reasonable classification.' (Citing *Hernandez* v. *Texas*, 347 U.S. 475, 478, 74 S.Ct. 667, 670, 98 L. Ed. 866)." 368 U.S. 57, 59-60, 82 S.Ct. 159, 161.

The Court of Appeals, by its decision in petitioner's case, creates a serious and substantial doubt as to whether the exclusion of Jews and Negroes from jury service in a state *civil* court is state action prohibited by the Fourteenth Amendment, to implement which Congress passed

the Civil Rights Acts. The exclusion of Negroes from state *criminal* jury service has occupied the attention of this Court many times, and in *Cassell* v. *State of Texas*, Justice Jackson in his Dissent opposed the reversal of a murder conviction stating that it is not just the least desirable members of society that can enforce their rights to a jury from which classes of persons have not been arbitrarily excluded.

> "These * * * *civil* remedies for discriminatory exclusions from the jury have been almost totally neglected * * *." Justice Jackson Dissenting in *Cassell* v. *State of Texas*, 339 U.S. 282, 303, 70 S.Ct. 629, 640. (Emphasis added).

As it was said in a case arising under 18 U.S.C.A., Sec. 243 and 42 U.S.C.A., Sec. 1983,

> "Valid jury selection is a constitutionally protected right." *Brown* v. *Rutter*, 139 F. Supp. 679, 682 (U.S. Dist. Ct., W.D. Kentucky, 1956).

The importance and significance of the unresolved Federal Constitutional questions regarding the exclusion of persons from state *civil* jury service can be seen in a report of the United States Commission on Civil Rights.

> "Diligent search failed to uncover a single reported federal court decision involving racial exclusion of jurors from civil trials in State courts." *Justice*, 1961 United States Commission on Civil Rights Report, page 250, Notes to footnote 134, Chapter 7, "Jury Exclusion".

> "There are no Supreme Court decisions arising from a direct attack on the discriminatory selection of a civil jury in a State court * * *." *Justice*, page 250, Notes to footnote 136, Chapter 7, "Jury Exclusion".

As a Court of Appeals has said about exclusion from jury service and the Equal Protection of the Laws,

> "* * * the right is one of broad significance closely and vitally connected with the proper administration of justice in both *civil* and criminal cases." *United States ex rel. Goldsby* v. *Harpole*, 5 Cir., 263 F.2d 71, 80 (1959). (Emphasis added).

II.

Since this Court has never made, apparently, an authoritative pronouncement on whether the arbitrary exclusion of certain classes of persons from state *civil* jury service is a Constitutional violation, the lower Federal courts have no guide line by which to proceed in such a case as the petitioner's suit.

In the petitioner's case the District Court judge was so acutely opposed to such a case being brought into the District Court that, in a hostile and non-judicial act, he felt free to bar and exclude petitioner from his jurisdiction and deny petitioner the right to equal access and equal entry into the District Court to bring therein a Civil Rights Act suit. Although petitioner was assailed in his rights in the District Court, he was totally denied the right to be heard there or represented there by an attorney. (App. 72-73; Rec. 110-111.)

The Court of Appeals, preferring to ignore the foundation of the judgment of dismissal of the District Court, nevertheless proceeded to affirm that void judgment.

The petitioner fully realizes that the Supreme Court of the United States is not just another appellate court sitting to correct errors but that this court brings up cases by certiorari to secure uniformity of decision between the circuits and brings up cases involving questions of im-

portance which it is in the public interest to have decided by this Court of last resort. (*Magnum Import Co.* v. *Coty*, 262 U.S. 159, 163, 43 S.Ct. 531, 532). Therefore, the petitioner does not wish to particularly dwell at length on the blatant denial of due and orderly process in the District Court and in the Court of Appeals, which is quite evident in the record of this case. What the record of this case shows, however, are not "errors" but misconduct. (See Certified copy of Petition for Rehearing, with attached Motion to Expunge, pages 1-3; and page 5 in particular.)

This Court, if it so desires, can use its power of supervision to keep the lower Federal courts open when certain district judges prefer to close their courtrooms to a litigant and renounce the Constitution.

> "But where wrongs to individuals are done by violation of specific guarantees, it is abdication for courts to close their doors." From *The Bill of Rights is Not Enough*, by William O. Douglas, New York University Law Review, April 1963, Vol. 38, No. 2, page 228.

The primary reasons for granting this petition have to to do with the importance and significance of what the Court of Appeals prefers to label as "The abuses of which plaintiff complains arise out of private rights and rights conferred by state law." (See Appendix A, *infra*, page 36).

Petitioner's complaint arises out of Federal constitutional rights *not* private or state rights.

As a court of appeals stated in referring to *Strauder* v. *West Virginia* (100 U.S. 303, 25 L.Ed. 664):

> "Strauder and a long line of succeeding Supreme Court cases hold that discrimination on the basis of race or ancestry in the selection of persons for service on grand or petit jury panels is *violative of the equal*

protection clause of the Fourteenth Amendment. A federal statute supplments this rule. 18 U.S.C.A., Sec. 243." *Bailey* v. *Henslee*, 8 Cir., 287 F.2d 936, 941-942 (1961), cert. den. 361 U.S. 945, 80 S. Ct. 408. (Emphasis added).

That petitioner's case is one which it is in the public interest to have decided by this Court of last resort, can easily be understood when one considers that the Jewish population of Chicago is estimated at 282,000 (World Almanac 1962, published by the New York World-Telegram and The Sun, page 258). And one must consider that the respondents, by their Motion to Dismiss, have admitted and verified the petitioner's allegations. (App. 12-14; Rec. 27-29. App. 20-21; Rec. 38-40.)

> "The evil lies in the *admitted exclusion* of an eligible class or group in the community in disregard of the prescribed standards of jury selection, . . . The injury is not limited to the (petitioner)—there is injury to the jury system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts." *Ballard* v. *United States*, 329 U.S. 187, 195; 67 S.Ct. 261, 265. (Emphasis added).

The petitioner has never been heard on the merits of his claim (in fact, a hostile District judge, by non-judicial acts, barred and excluded the petitioner from his jurisdiction). Therefore, whether the overt acts of which petitioner complains are both a conspiratorial *and* a systematic exclusion of Jews and Negroes from jury service remains to be heard. Petitioner has had no opportunity to take testimony, to introduce evidence, to cross-examine, or to have his facts judged by a jury.

The Court of Appeals sets up a substantial doubt whether the exclusion of Negroes from state civil jury service is a denial of the Equal Protection of the Laws to a Jew,

The Court of Appeals decision sets up an important doubt whether a Jew can be aggrieved by the exclusion *not only of Jews but of Negroes.*

Regarding unlawful discrimination in the selection of jurors, a Justice Department Notice to United States Attorneys pointed out:

> "Notice to United States Attorneys
>
> "Request that cases involving intentional exclusion from grand or petit juries of Negroes *or other citizens*, on account of their race or color, be reported. * * * Unlawful discrimination can be established * * * by a showing that the jury commissioners disregarded Negroes' and thereby intentionally excluded them, choosing only from citizens they personally knew; or *by other proof depending upon the nature of the case.*" Justice Department (Bulletin), Criminal Division, vol. 9, No. 14, pp. 1-2, July 17, 1950. (Emphasis added).
>
> "It is part of the established tradition in the use of juries as instruments of *public justice* that the jury be a body truly representative of the community. For racial discrimination to result in the exclusion from jury service of otherwise qualified groups *not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government.* We must consider this record in the light of these important principles. The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. *The Fourteenth Amendment requires that equal protection to all must be given —not merely promised.*" *Smith v. State of Texas*, 311 U.S. 128, 130, 61 S.Ct. 164, 165, 85 L.Ed. 84. (Emphasis added).
>
> "Discrimination against a race by barring or limiting citizens of that race from participation in jury service are odious to our thought and our Constitution. This has long been accepted as the law. (Citing

authorities). *Such discrimination is forbidden by statute*, 18 U.S.C. Sec. 243, 18 U.S.C.A. Sec. 243 * * *". *Brown* v. *Allen*, 344 U.S. 443, 470-471, 73 S.Ct. 397, 414, 97 L.Ed. 469. (Emphasis added).

III.

A diligent search failed to uncover an authoritative pronouncement by this Court on the scope and construction of 42 U.S.C.A. Section 1985(2).

In *Snowden* v. *Hughes*, 1943 (321 U.S. 1, 64 S.Ct. 397, 88 L.Ed. 497) this Court dealt with former Title 8 U.S.C.A. Sec. 47(3), now 42 U.S.C.A. Sec. 1985(3), but did not reach the provisions of Sec. 1985(3) regarding two or more persons in any State who conspire "for the purpose of preventing or hindering the constituted authorities of any State * * * from giving or securing to all persons within such State * * * the equal protection of the laws * * *."

In *Collins* v. *Hardyman*, 1951 (341 U.S. 651, 71 S.Ct. 937, 95 L.Ed 1253) this Court dealt with the provisions of former Title 8 U.S.C.A. Sec. 47(3), now 42 U.S.C.A. Sec. 1985(3).

As it was pointed out by Mr. Justice Harlan, concurring in *Monroe* v. *Pape*:

> "I do not think this Court's decision in *Collins* v. *Hardyman*, 341 U.S. 651, 71 S.Ct. 937, 95 L.Ed. 1253, can properly be viewed as determining the scope of the provision of Sec. 1985 which refers to conspiring 'for the purpose of preventing * * * the constituted authorities of any State * * * from giving * * * the equal protection of the laws * * *.' Not only did the Court specifically disclaim any consideration of this provision, but it proceeded to emphasize that the petitioners therein had only been subjected to a private discrimination since 'There is not the slightest allegation that defendants were conscious of or trying to

> influence the law, or were endeavoring to obstruct or interfere with it.' 341 U.S. at page 661, 71 S.Ct. at page 942. The holding that the equal protection of the law is unaffected by discriminatorily motivated violations of state law so long as the instrumentalities of law enforcement remain free, able, and willing to remedy these violations *is clearly based upon premises which cannot control the quite dissimilar case of a conspiratorial attempt to affect the fairness of these instrumentalities*, 'the constituted authorities of any State.'" 365 U.S. 167, 200, 81 S.Ct. 473, 491, 5 L.Ed.2d 492, footnote 9. (Emphasis added).

In *Monroe* v. *Pape* this Court did not deal with the provisions of 42 U.S.C.A. Section 1985 (365 U.S. 167, 200, 81 S.Ct. 473, 491).

The Court of Appeals by ignoring and rejecting in petitioner's suit Section 1985(2) and Section 1985(3), gives no effect to those Sections. The Court of Appeals' decision casts a serious doubt as to the validity and application of Sections 1985(2) and 1985(3). In so doing, the Court of Appeals sets up a precedent clearly contrary to the intentions of Congress in passing R.S. Section 1980 (now 42 U.S.C.A. Sec. 1985):

> "If the refusal of a State officer, acting for the State, to accord equality of civil rights renders him amenable to punishment for the offense under United States law, conspirators who attempt to prevent such officers from performing such duty are also clearly liable." Statement of Representative Burchard, Congressional Globe, 42d Congress, 1st Session, App. 315.

Petitioner's case arises under Section 1985(2) and Section 1985(3). (App. 3, Rec. 4). Since petitioner's case seeks to hold liable a state court deputy sheriff and co-conspirators for destroying trial by jury, by the intentional exclusion of Jews and Negroes from jury service and by unlawful invasion of and interference with jurors' de-

liberations—petitioner's case is within the provisions of Section 1985(2) and Section 1985(3) not dealt with previously by this Court. An authoritative pronouncement by this Court regarding those Sections could set at rest any doubts as to the validity and application of R.S. Section 1980.

> "Tampering with a jury is an abhorrent crime, poisonous to our system of justice." Washington, Circuit Judge, Dissenting in *Caldwell* v. *United States*, D. of C.Cir., 218 F.2d 370, 372.

As Edgerton, Circuit Judge, said in delivering the Opinion of the Court in the same case:

> "* * * unauthorized invasions 'obstruct, or impede, the due administration of justice' * * * (Citing authority). * * * Since unauthorized invasions of the integrity of jury proceedings are evil, they are 'corrupt'." 218 F.2d 370, 371.

As it was said in a prosecution under the provisions of what is now 18 U.S.C.A. Sec. 241:

> "There was * * * interference with an appendage of the court while in actual operation; the inevitable tendency was towards evil, *the destruction, indeed, of trial by jury.*" *Sinclair* v. *United States*, 279 U.S. 749, 765, 49 S.Ct. 471, 476. (Emphasis added).

The Court of Appeals, by its decision in petitioner's case, sets up a precedent which characterizes the destruction of trial by jury in a state civil court by a state court deputy sheriff and collaborators, as merely abuses arising out of private rights and rights conferred by state law. By its decision, the Court of Appeals, in effect, repeals for the 7th Circuit, the provisions of the Fourteenth

Amendment guaranteeing Due Process of Law and the Equal Protection of the Laws.

> "But states can act only through human beings; and it has long been settled that when a state clothes an individual with official authority, and the official commits an abuse of power in the exercise of that authority, his action in the name of the state is *state action within the meaning of the prohibitions of the Fourteenth Amendment*, even though what he did was not authorized by the laws of the state. (Citing *Ex parte Commonwealth of Virginia*, 1879, 100 U.S. 339, 346-349, 25 L.Ed. 676)." *Wall* v. *King*, 1 Cir., 206 F.2d 878, 882 (1953). (Emphasis added).

> "Any attempt, whether made to induce a witness * * * to testify falsely *or a juror to depart from his duty*, or a judge to decide unlawfully, is likewise an obstruction to the administration of justice." *United States* v. *Huff*, 206 Fed. 709, 711 (D.C. Ga. 1913). (Emphasis added).

As it was said in a case where a person was prosecuted for attempting to corruptly "hang" a jury:

> "If this * * * does not establish a brazen and outrageous attempt to corrupt * * * a juror * * * it is hard to imagine what would be necessary to do so." *Martin* v. *United States*, 4 Cir., 166 F.2d 76, 78 (1948).

IV.

The decision by the Court of Appeals in petitioner's case is in direct conflict with other decisions as follows:

A. The Court of Appeals indicates that the District Court did not have jurisdiction.

(1) Regarding the jurisdiction of the District Court under 28 U.S.C.A. Sec. 1343 and under 42 U.S.C.A. Sections 1983 and 1985(2), the decision is in direct conflict

with, and "in head-on collision with", *Harmon* v. *Superior Court*, 9 Cir., Sept., 1962, a Civil Rights Act suit against a sheriff, court personnel, etc., in which it was said:

> "Appellant has attempted, however, imperfectly, to state a claim under acts of Congress that expressly give the District Court jurisdiction. *That court then had jurisdiction.* (Citing authorities)." 307 F.2d 796, 798. (Emphasis added).

> "The court cannot know, without hearing the parties, whether it may be possible for appellant to state a claim entitling him to relief, however strongly it may incline to the belief that he cannot." 307 F.2d 796, 798.

> "The right to a hearing on the merits of a claim over which the court has jurisdiction is of the very essence of our judicial system * * *." 307 F.2d 796, 798.

(2) In direct conflict with *Bell* v. *Hood*, on what is now the provisions of 28 U.S.C.A. Sec. 1331,

> "* * *, where the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, *the federal court * * * must entertain the suit.* * * * The reason for this is that *the court must assume jurisdiction to decide whether the allegations state a cause of action* on which the court can grant relief as well as to determine issues of fact arising in the controversy." 327 U.S. 678, 681-682, 66 S.Ct. 773, 776, 90 L.Ed. 939. (Emphasis added).

> "Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided *after* and *not before* the court has assumed jurisdiction over the controversy." 327 U.S. 678, 682. (Emphasis added).

(3) In direct and complete conflict with *Monroe* v. *Pape*, where it was said about 42 U.S.C.A. Sec. 1983 (R.S. 1979):

> "It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because by reason of prejudice, passion, neglect, intolerance or otherwise, *state laws* might not be enforced and the claim of citizens to the enjoyment of rights, privileges, and immunity guaranteed by the Fourteenth Amendment might be denied by the state agencies." 365 U.S. 167, 180, 81 S.Ct. 473, 480, 5 L.Ed. 2d 492. (Emphasis added).

(4) In direct conflict with *Romero* v. *Weakley*, 9 Cir., 1955,

> "One of the obvious purposes of the creation of right to litigate these civil rights in a federal court is to enable a member of a minority group claiming race or color discrimination to choose either a court presided over by a federal judge appointed by the President of the United States or a state court, presided over by an elected judge." 226 F.2d 399, 400.
>
> "In refusing to consider appellants' complaints, the district court considers the case from a viewpoint *exactly contrary* to this obvious purpose of the civil rights legislation to give the litigant his choice of a federal forum rather than that of the state." 226 F.2d 399, 401. (Emphasis added).

(5) In direct conflict with *Baldwin* v. *Morgan*, 5 Cir., 1958,

> "But those who directly assist the admitted state agency in carrying out the unlawful action become a part of it and subject to the sanction of Section 1983." 251 F.2d 780, 788.

(6) In direct conflict with *Watkins* v. *Oak Lawn Jockey Club*, 8 Cir., 1950,

> "And there is no dispute in respect of the applicable law. 'Since jurisdiction of the federal court is based upon a federal statute and the parties are residents of the same state * * federal law and not state law controls.'" 183 F.2d 440, 442.

(7) In direct conflict with *Fleming* v. *South Carolina Electric and Gas Company*, 4 Cir., 1955,

> "We think that there can be no question as to the jurisdiction of the court. Under 28 U.S.C. Sec. 1343 (3) the District Courts are given jurisdiction of actions to redress the deprivations under color of any state law, of any right, privilege or immunity secured by the Constitution of the United States or by any act of Congress providing for equal rights of citizens." 224 F.2d 752, 753.

(8) Regarding the jurisdiction of the District Court, the decision of the Court of Appeals in petitioner's case is in direct conflict with *Hague* v. *C.I.O.*, 307 U.S. 496, 507, 514, 527-532, 59 S.Ct. 954, 960-963, 969-971, 83 L.Ed. 1423.

(9) Regarding the jurisdiction of the District Court, the decision is in direct conflict with *Douglas* v. *City of Jeanette*, 319 U.S. 157, 161, 63 S.Ct. 877, 880, 87 L.Ed. 1324.

(10) In direct conflict with *McNeese* v. *Board of Ed. for Com. U. Sch. Dist. 187, Cahokia, Ill.*,

> "For petitioners assert that respondents have been * * * depriving them of rights protected by the Fourteenth Amendment. It is immaterial whether respondents' conduct is legal or illegal as a matter of state law. (Citing *Monroe* v. *Pape*, 365 U.S. 167, 171-187). *Such claims are entitled to be adjudicated in the federal courts.* (Citing authorities)." 83 S.Ct. 1433, 1437, 31 LW 4567, 4568-4569 (June 3, 1963). (Emphasis added).

B. The state court deputy sheriff, one of the respondents, has claimed his actions were not "under color of law" because the quasi-judicial nature of his position makes him immune from civil liability. (App. 15; Rec. 31-32).

(1) The Court of Appeals' decision in petitioner's case states that the respondents were not acting under color of state law within the meaning of the Federal Civil Rights Acts. The decision is completely, directly, and clearly in conflict with this Court's decision in *Ex parte Virginia*, where the prosecution of a Judge Cole under 18 Stat. 336 (now 18 U.S.C.A. Sec. 243) was upheld:

"It was insisted during the argument on behalf of (Judge Cole) that Congress cannot punish a State Judge for his official acts; and it was assumed that Judge Cole, in selecting the jury as he did, was performing a judicial act. *This assumption cannot be admitted.* Whether the act done by him was judicial or not is to be determined by its character, and not by the character of the agent. Whether he was a county judge or not is of no importance. The duty of selecting jurors might as well have been committed to a private person as to one holding the office of a judge. * * * In such cases, it surely is not a judicial act, in any sense as is contended for here. *It is merely a ministerial act* * * *." *Ex parte Virginia*, 100 U.S. 339, 348, 25 L.Ed. 676, 680. (Emphasis added).

As this Court said of the prohibitions of the Fourteenth Amendment:

"*Whoever*, by virtue of public position under a state government, deprives another of property, life or liberty without due process of law, *or denies or takes away the equal protection of the laws*, violates the constitutional inhibition; and as he acts in the name

and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or to evade it." 100 U.S. 339, 347, 25 L.Ed. 676, 679. (Emphasis added).

(2). In direct conflict with *Home Telephone & Telegraph Co.* v. *Los Angeles*,

"* * * the provisions of the (Fourteenth) Amendment as conclusively fixed by previous decisions are generic in their terms, are addressed, of course, to the states, but also *to every person*, whether natural or juridical, *who is the repository of state power*. By this construction the reach of the Amendment is shown to be coextensive with any exercise by a state of power, in whatever form exerted." 227 U.S. 278, 287, 33 S.Ct. 312, 314, 57 L.Ed. 510. (Emphasis added).

(3) In direct conflict with *United States* v. *Classic*,

"Misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law, is action taken 'under color of' state law." 313 U.S. 299, 326, 61 S.Ct. 1031, 1043, 85 L.Ed. 1368.

(4) In direct conflict with *Screws* v. *United States*, 325 U.S. 91, 108-113, 65 S.Ct. 1031, 1038-1041, 89 L.Ed. 1495.

(5) In direct conflict with *Williams* v. *United States*, 341 U.S. 97, 99, 71 S.Ct. 576, 578, 95 L.Ed. 774.

(6) In direct conflict with *Monroe* v. *Pape*,

"There can be no doubt at least since *Ex parte Virginia*, 100 U.S. 339, 346-347, 25 L.Ed. 676, that Congress has the power to enforce provisions of the Fourteenth Amendment against those who carry a badge of authority of a State and represent it in some capacity, *whether they act in accordance with their authority or misuse it*." 365 U.S. 167, 171-172, 81 S.Ct. 473, 476, 5 L.Ed. 2d 492. (Emphasis added.)

(7) In direct conflict with *Marshall* v. *Sawyer*, 9 Cir., March, 1962,

"The (respondents') conduct was engaged in under color of state law if they were clothed with the authority of the state and were purporting to act thereunder, whether or not the conduct complained of was authorized or, indeed, even if it was proscribed by state law. (Citing authorities). Whether there is 'color' of state law is a *federal, not a state question.* Were this not true a state, acting through its legislature or courts, would have it within its power to *immunize* its agencies and officials from liability under the Civil Rights Act." 301 F.2d 639, 646. (Emphasis added).

(8) In direct conflict with *McShane* v. *Moldovan*, 6 Cir., 1949, 172 F.2d 1016, a Civil Rights Act suit, charging state officers and others with a conspiracy part of the overt acts of which were to prepare a fraudulent jury list, to unlawfully select or exclude certain persons as jurors. The court held that the action was taken "under color of law" (172 F.2d 1016, 1023).

(9) In direct conflict with *Baldwin* v. *Morgan*, 5 Cir., 1958,

"But those who directly assist the admitted state agency in carrying out the unlawful action become a part of it and *subject to the sanction of Section* 1983." 251 F.2d 780, 788. (Emphasis added).

(10) In direct conflict with *Valle* v. *Stengel*, 3 Cir., 1949,

"The fact that Stengel, a law-enforcement officer, was acting in defiance of the law * * * will not serve as a defense and, since the complaint alleges in effect that he aided and abetted * * * the (other) defendants, his actions may be attributed to them and treated as their own." 176 F.2d 697, 702.

(11) In direct conflict with *Stringer* v. *Dilger*, 10 Cir., Jan., 1963,

"The evidence here clearly establishes that Dilger was acting pursuant to state law * * * and he was, therefore, acting 'under color of' state law even though such actions may have been in excess of his authority." 313 F.2d 536, 540.

(12) In direct conflict with *Hoffman* v. *Halden*, 9 Cir., 1959,

"But the broad scope of the Civil Rights Acts would impose liability on state officers for acts done under color of law, *acts done within*, as well as without, *the scope of their authority*." 268 F.2d 280, 299. (Emphasis in the opinion itself).

C. Since valid jury selection is a constitutionally protected right, the Court of Appeals' decision in petitioner's case is in direct conflict with other decisions.

(1) In direct conflict with *Smith* v. *State of Texas*, 311 U.S. 128, 130, 61 S.Ct. 164, 165, 85 L.Ed. 84.

(2) In direct conflict with *Thiel* v. *Southern Pac. Co.*, a case dealing with jury exclusion in Federal civil proceedings:

"The American tradition of trial by jury, *considered in connection with either criminal or civil proceedings*, necessarily contemplates an impartial jury drawn from a cross-section of the community. (Citing authorities). This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political and geographical groups of the community * * *. But it does mean that prospective jurors shall be selected by court officials without systematic and *intentional exclusion* of any of these groups." 328 U.S. 217, 220, 66 S.Ct. 984, 985. (Emphasis added).

(3) In direct conflict with *Ballard* v. *United States*, 329 U.S. 187, 195, 67 S.Ct. 261, 265.

(4) In direct conflict with *Brown* v. *Allen*, 344 U.S. 443, 470-471, 73 S.Ct. 397, 414, 97 L.Ed. 469.

(5) In direct conflict with *Hernandez* v. *State of Texas*,

"The Fourteenth Amendment is not directly solely against discrimination due to a 'two-class theory'—that is, based upon differences between 'white' and Negro. * * * The exclusion of otherwise eligible persons from jury service because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment." 347 U.S. 475, 478-479, 74 S.Ct. 667, 670-671, 98 L.Ed. 866.

(5) In direct conflict with *Hoyt* v. *State of Florida*, 368 U.S. 57, 59-60, 82 S.Ct. 159, 161.

(6) In direct conflict with *United States ex rel. Goldsby* v. *Harpole*, 7 Cir., 263 F.2d 71, 80 (1959), cert. den. 361 U.S. 838, 80 S.Ct. 58, 4 L.Ed. 2d 78.

(7) In direct conflict with *Bailey* v. *Henslee*, 8 Cir., 287 F.2d 936, 941-942 (1961), cert. den. 361 U.S. 945, 80 S.Ct. 408.

(8) In direct conflict with *United States ex rel. Seals* v. *Wiman*, 5 Cir., 304 F.2d 53 (June, 1962), cert. den. 83 S.Ct. 741.

D. Petitioner's suit arises under R.S. 1980; now 42 U.S.C.A. Section 1985(2)(3). The Court of Appeals' decision conflicts with decisions in other cases arising under the provisions of the same section.

(1) Regarding R.S. 1980, the decision is in direct conflict with *McShane* v. *Moldovan*, 6 Cir., 1949, 172 F.2d 1016, 1018-1019.

(2) In direct conflict with *Lewis* v. *Brautigam*, 5 Cir., 1955, 227 F.2d 124, 127-128.

(3) In direct conflict with *Babouris* v. *Morgan*, 5 Cir., 1958, 251 F.2d 780, 790-791.

(4) In direct conflict with *Hoffman* v. *Halden*, 9 Cir., 1959, 268 F.2d 280, 292.

(5) In direct conflict with, and "in head-on collision with," *Harmon* v. *Superior Court*, 9 Cir., 307 F. 2d 796 (1962), a suit arising under the provisions of 42 U.S.C.A. Section 1985(2).

V.

The provisions of what is now Sec. 243 of Title 18 U.S.C.A. (derived from an Act of Mar. 1, 1875, c.114, Sec. 4, 18 Stat. 336) have survived from 1875 to this date. When other parts of the Civil Rights Act of 1875 were struck down in 1883 by this Court, Sec. 4, 18 Stat. 336 survived. (See, Civil Rights Cases, 109 U.S. 3, 27 L.Ed. 836, at 840). By giving no effect to Sec. 243, the Court of Appeals nullifies it—as if Sec. 243 never existed at all.

As the United States Commission on Civil Rights suggested in its 1961 Report, more attention to 18 U.S.C.A. Sec. 243 "would help eliminate racial exclusion from juries, at least in its more flagrant manifestations." *Justice*, 1961 United States Commission on Civil Rights Report, page 103, Chapter 7, "Jury Exclusion".

Justice Jackson's statement in his Dissent in *Cassell* v. *State of Texas*, regarding Sec. 243, seems to be ignored:

"* * * I would send a copy of the record to the Department of Justice for investigation as to whether there have been violations of the statute and, if so, for prosecution." 339 U.S. 282, 305, 70 S.Ct. 629, 640 (Dissenting Opinion).

By its decision the Court of Appeals renders the Civil Rights Acts inoperative, null and void in the 7th Circuit. There is a serious doubt, set up by the Court of Appeals' decision, whether the Federal Constitutional rights to valid jury selection and to the Equal Protection of the Laws are Federal rights to be made available to persons not accused of a crime. Can a useful, law-abiding citizen, who is a member of a minority group or class, maintain in the Federal Court a Civil Rights suit against those who intentionally excluded his class and another minority class from state *civil* jury service, and destroyed trial by jury? The Court of Appeals for the Seventh Circuit does not think so. Are not such claims entitled to be adjudicated in the Federal Courts? The Court of Appeals does not think so.

The petitioner asks this Court to grant certiorari and to dispel these doubts.

CONCLUSION.

For the reasons above stated it is respectfully submitted that the Petition for writ of certiorari be granted.

Respectfully submitted,

SHERMAN H. SKOLNICK,
Petitioner, Pro Se.

APPENDIX A.

In the

United States Court of Appeals

For the Seventh Circuit

No. 13997 SEPTEMBER TERM, 1962—APRIL SESSION, 1963

SHERMAN H. SKOLNICK
Plaintiff-Appellant,

v.

OTTO SPOLAR, CHARLES T. MARTIN, J. WILLIAM HAYTON, ARTHUR G. LILLY, and CHARLES R. PERRIGO,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

May 7, 1963

Before HASTINGS, *Chief Judge*, KNOCH and KILEY, *Circuit Judges.*

HASTINGS, *Chief Judge*. Plaintiff Sherman H. Skolnick appeals from a judgment order of the district court, Honorable Joseph Sam Perry presiding, dismissing his complaint for failure to state a claim upon which relief could be granted.

This is a companion case to *Skolnick* v. *Martin, et al.*, No. 13948, ... F.2d ....., decided adversely to appellant today. The instant case finds its genesis in the same state court action referred to therein.

On May 23, 1958, plaintiff filed a civil damage action in the Circuit Court of Cook County, Illinois (58-C-7219). Defendants named in this state court action were his stockbrokers, Hornblower and Weeks and the partners in that firm, including Arthur Lilly and Charles R. Perrigo. This complaint charged defendants with the breach of an alleged oral trust in handling plaintiff's speculation in the stock market. Charles T. Martin and J. William Hayton acted therein as attorneys for defendants.

The state court action was tried by a jury on January 18-26, 1961, resulting in a disagreement of the jury. The case has never been retried in the state court and is still pending. Honorable L. L. Winn, circuit judge, presided at the state court trial and Otto Spolar was assigned as circuit court bailiff to Judge Winn's courtroom.

On June 11, 1962, plaintiff filed the instant action in the United States District Court against Spolar, Martin, Hayton, Lilly and Perrigo. He sought to recover damages for alleged improprieties in the state court trial held in January, 1961.

It is conceded there is no diversity of citizenship present in this case. Plaintiff attempts to invoke jurisdiction of the federal courts by claiming he suffered a deprivation of his rights under the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States. He further alleges that the state court trial resulted in a hung jury to his resultant loss and damage because of an alleged violation of the Federal Civil Rights Acts, 42 U. S. C. A. §§ 1981-1988.

Plaintiff asserts jurisdiction under the Federal Civil Rights Acts, *supra*, by virtue of 28 U. S. C. A. §§ 1343 and 1331. His principal reliance is upon the holding in *Monroe*

v. *Pape*, 365 U. S. 167 (1961). We believe this reliance is misplaced.

The acts complained of arose during the progress of the state court trial. In substance, plaintiff (a member of the Jewish faith) charges that defendants conspired with each other to defeat his cause of action in violation of his constitutional rights wherein Spolar, acting as court bailiff, directed a deputy sheriff not to "bring up any blacks or sheenies" for jury service; that Spolar referred to plaintiff as a "kid sitting in a wheelchair making out like he is a cripple"; that Martin and Hayton excused a Negro prospective juror; that during a recess Spolar made derogatory remarks about plaintiff within hearing distance of the jurors who were then in the jury room; that during the deliberations of the jury Martin and Hayton attempted to overhear such deliberations and looked through the keyhole of the jury room door and from time to time made audible remarks to each other concerning the progress of the deliberations of the jury; and other charges in a similar vein against the bailiff and the lawyers.

For the reasons stated in our opinion today and under the authorities cited therein in the companion case of *Skolnick* v. *Martin, et al.*, *supra*, we hold that, under the facts of the instant case, plaintiff's complaint does not state facts sufficient to state a claim under federal jurisdiction upon which relief could be granted.

This was a state court action between private parties in which the state merely furnished the forum and in which it had no interest. Those who are alleged to have conspired cannot be said to have been acting under color of state law within the meaning of the Federal Civil Rights Act. The facts alleged do not support plaintiff's conclusory statements that his federal constitutional rights have been violated.

The abuses of which plaintiff complains arise out of private rights and rights conferred by state law. *Johnson v. Stone*, 7 Cir., 268 F. 2d 803 (1959); *Miles v. Armstrong*, 7 Cir., 207 F. 2d 284 (1953). Mere errors or irregularities in the state court proceedings are not sufficient to show a purposeful conspiracy to deny plaintiff due process. *Snowden v. Hughes*, 321 U. S. 1 (1944); *Hanna v. Home Insurance Company*, 5 Cir., 281 F. 2d 298 (1960).

The federal courts do not guarantee a citizen against the loss of a private civil action due to alleged irregularities in the trial thereof in a state court.

Further, in accord with our holding today in *Skolnick v. Martin, et al., supra*, the trial court did not err in ruling on the motion to dismiss the complaint without hearing oral argument thereon. It was properly and adequately submitted on the motion, objections and briefs filed by the parties and considered by the trial court.

For the foregoing reasons, we hold that the judgment dismissing plaintiff's complaint must be affirmed.

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

Tuesday, May 7, 1963

Before

Hon. John S. Hastings, Chief Judge
Hon. Win G. Knoch, Circuit Judge
Hon. Roger J. Kiley, Circuit Judge

Sherman H. Skolnick, Plaintiff-Appellant, vs. Otto Spodar, Charles T. Martin, J. William Hayton, Arthur G. Lilly, and Charles R. Perrigo, Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 13997.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX C.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

Chicago 10, Illinois

Thursday, June 6, 1963

Before

Hon. John S. Hastings, Chief Judge
Hon. Wm. G. Knoch, Circuit Judge
Hon. Roger J. Kiley, Circuit Judge

Sherman H. Skolnick, Plaintiff-Appellant, vs. Otto Spolar, et al., Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 13397	

It Is Ordered by the Court that the petition of plaintiff-appellant for rehearing of this cause be, and the same is hereby Denied.